

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**Writ Petition No. 5150 of 2013**

- 1) Kiran s/o Manikrao Bhusare,  
Age 30 years,  
Occupation : Service as  
Assistant Professor and  
Union Secretary,  
Bhartiya Kamgar Sena,  
Having its Unit at  
Shri. Bhagwan College of  
Pharmacy, Aurangabad.
- 2) Dr. Aquil-ur-Rahim Siddiqui  
S/o Enam-ur-Rahim Siddiqui  
Age 50 years,  
Occupation: Service as  
Associate Professor and  
Head of Department of  
Pharmacognosy,  
Shri. Bhagwan College of Pharmacy,  
N-6, CIDCO, Aurangabad  
R/o H. No.15, Shabista Housing  
Society, Zulnoorain Complex,  
VIP Road, Rasheedpura,  
Aurangabad.
- 3) Preeti Narayan Sable,  
Age 26 years,  
Occupation: Service as Lecturer,  
Shri. Bhagwan College of Pharmacy  
Aurangabad  
R/o Plot No.9, Yogayog Society,  
N-12, D, HUDCO, Aurangabad.
- 4) Nanasaheb s/o Babasaheb Dharbale,  
Age 27 years,  
Occupation: Service as Lecturer  
Shri Bhagwan College of Pharmacy  
R/o H. No.169, Plot No.159,  
Pundliknagar, Aurangabad.

- 5) Vijayalaxmi Appasaheb Chavan,  
Age 27 years,  
Occupation: Service as  
Assistant Professor  
Shri Bhagwan College of Pharmacy  
Aurangabad  
R/o Plot No.1117, Sai-nagar, N-6,  
CIDCO, Aurangabad.
- 6) Pawan s/o Balmukund Rathi,  
Age 29 years,  
Occupation: Service as  
Assistant Professor in Shri.  
Bhagwan College of Pharmacy  
Aurangabad  
R/o "Rushikesh Nivas"  
Sanjay Nagar, C-4,  
H. No.3-8-46, Smashan Maruti  
Road, Akashwani, Aurangabad.
- 7) Ganesh s/o Kaduba Gajare,  
Age 32 years,  
Occupation; Service as  
Assistant Professor  
R/o Pushpak Garden,  
Near Bus Stop, Chikalthana  
(Air Port), Aurangabad. .. **Petitioners.**

### **Versus**

- 1) The State of Maharashtra  
Through Secretary  
Technical Education Department  
Mantralaya, Mumbai.
- 2) Joint Director of Technical Education  
Near Polytechnic College,  
Osmanpura, P.O. Box 516,  
Aurangabad.

- 3) Principal Secretary,  
All India Council for Technical  
Education, 7th Floor,  
Chandralok Building,  
Janpath, New Delhi 110 001.
- 4) Chairman (Regional)  
All India Council of Technical  
Education (Western Region)  
7th Floor, LIC Building,  
Nariman Road, Church Gate,  
Mumbai.
- 5) President,  
Pharmacy Council of India  
Combined Council's Building  
Kotla Road, Aiwan-E-Ghalib Marg,  
New Delhi.

(Note : Respondent No.5 is deleted  
as per order dated 13-9-2013)

- 6) The Registrar,  
Dr. Babasaheb Ambedkar  
Marathwada University,  
University Campus,  
Aurangabad.
- 7) Secretary,  
Bhagwan Shikshan Prasarak  
Mandal's Shri. Bhagwan  
College of Pharmacy,  
Dr. Y.S. Khedkar Marg,  
N-6, CIDCO,  
Aurangabad 431 003.
- 8) Principal,  
Shri. Bhagwan College of  
Pharmacy,  
Dr. Y.S. Khedkar Marg,  
N-6, CIDCO, Aurangabad.

**.. Respondents.**

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Shri. S.R. Chaukidar, Advocate, for petitioners.

Shri. A.V. Deshmukh, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. S.V. Adwant, Advocate, for respondent Nos.3 and 4.

Respondent No.5 - deleted.

Shri. S.G. Chapalgaonkar, Advocate for respondent No.6.

Shri. P.M. Shah, Senior Counsel instructed by Shri. A.M. Karad and Shri. S.G. Rudrawar, Advocates for respondent Nos.7 and 8.

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**CORAM: T.V. NALAWADE &  
SUNIL K KOTWAL, JJ.**

**DATE : 15 JANUARY 2018**

**JUDGMENT (Per T.V. Nalawade, J.):**

1) Rule, rule made returnable forthwith. By consent heard both sides for final disposal.

2) The petition is filed by the employees from teaching staff of one private unaided College of Pharmacy which is represented by respondent Nos.7 and 8 in the present proceeding for the relief of direction to respondent Nos.1 to 6 to take necessary steps to see that respondent Nos.7 and 8 pay to the petitioners salary,

allowances, arrears thereof and make available the benefits of the proposals made by the 6th Pay Commission.

2) Respondent Nos.7 and 8, the management, is running Graduate as well as Post-Graduate courses in Pharmacy Branch at Aurangabad on self finance basis. The petitioners are working as Lecturers, Assistant Professors and Associate Professors.

3) It is the case of the petitioners that the Government of Maharashtra has accepted the recommendations of 6th Pay Commission which were already accepted by the Central Government and the benefits are extended to the employees of the University and the affiliated colleges. It is the case of the petitioners that the effective date for the application of the recommendations is fixed as 1-1-2006. It is contended that the petitioners had filed many representations with the management and also with University and other authorities for seeking the relief claimed in the present matter but the management has not given any response to

the representations. The petitioners are relying on the decision given by this Court in Writ Petition No.11091 of 2010 decided with connected matters on 10-2-2012. This Court allowed the writ petition and directed the management of one Engineering College from Aurangabad to see that the pay scales suggested by the 6th Pay Commission are applied to both the teaching and non teaching staff with effect from 1-1-2006. This decision was challenged by the management of that college but the Apex Court dismissed the civil appeal filed by the management. This decision of Apex Court dated 5-1-2017 is reported in the case reported as **2017(1) ALL MR 947 (SC) (Secretary Mahatma Gandhi Mission and Anr. vs. Bhartiya Kamgar Sena and Ors)**. It is the contention of the petitioners that the institution involved in that previous matter was also technical institution and so similar direction needs to be given in the present matter.

4) Respondent No.8 has filed affidavit-in-reply. Respondent-management has contested the present proceeding by making various contentions some of which are quoted in this decision. One of the petitioners has filed

affidavit as rejoinder to reply the contentions made by the respondent Nos.7 and 8.

5) The learned counsels for the University and All India Council for Technical Education (for short, "AICTE") submitted that in view of the decision given by this Court which is confirmed by the Apex Court, they are supporting the petitioners. The learned counsel for the AICTE made further submissions by drawing attention of this Court to the provisions of the All India Council for Technical Education Act 1987 and submitted that to ensure that the students studying in such colleges get quality education, teaching staff needs to get the salary as proposed by 6<sup>th</sup> Pay Commission and which is being given to the teaching staff of the colleges receiving Government aid. He submitted that the circumstances that respondent management is not getting Government aid and the probability that the management is required to manage the things on the fees collected cannot be considered for deciding the present matter. He placed reliance on the observations made by the Apex Court in the case reported as **(2013) 3 SCC 385 (Parshvanath Charitable Trust v. All**

**India Council for Technical Education)** and took this Court through paragraphs 21 and 24 of the reported case to show that the conditions imposed by the AICTE need to be fulfilled. He submitted that the regulations made by the AICTE are now placed before both the Houses of the Parliament and in any case due to the conditions imposed by the AICTE for getting approval and continuation of approval it is necessary for respondent No.1 to comply those conditions and act as per undertaking given for getting approval and continuation of approval.

6) It is not disputed that the respondent institution falls under the definition of “technical education” given in section 2(h) of the AICTE Act, 1987 as it is running a college of technical education, a Pharmacy College. The aforesaid previous matter was decided by this Court in respect of teaching staff of one Engineering College which was run on self-finance basis, which was not getting aid from Government. So it was necessary for the respondent-management to satisfy this Court that the decision given by this Court in the matter, quoted above, which is confirmed by the Hon'ble Apex Court cannot be

used in favour the present petitioners. The learned Senior Counsel argued before this Court by raising following points :-

- (i) Respondent-institution is unaided institution and it is required to run and manage the college on the basis of the fees collected from students;
- (ii) in the petition no cause of action is disclosed by the petitioners;
- (iii) the pay commission has made only recommendations and the suggestions of the pay commission which are accepted by the State Government are not binding on respondent-institution;
- (iv) the directives given by the Union of India, the State Government, AICTE and University are not binding on the respondent-institution as it is not receiving the aid from Government;
- (v) the proceeding came to be filed very late and it will not be possible for the institution to collect more fees from the students of past years and even the Fee Regulatory Committee may not allow the respondent-institution to take such step; and,

(vi) the petitioners are not entitled to get relief on the ground of delay.

7) In the petition, the petitioners have referred to the directions given by the AICTE in Notification dated 5-3-2010, the directions given by the University in Notification dated 29-8-2009, the Government Resolutions of the State Government dated 12-8-2009 and 20-8-2010. The learned Senior Counsel for the respondent-management made arguments in respect of each of these directions separately. The learned Senior Counsel submitted that in the case cited supra the Hon'ble Apex Court has used Government Resolution dated 12-8-2009 of the State Government as the base for the decision and so the Apex Court has not held that the other authorities like AICTE and University have authority to give directions which can bind respondent-management. The learned Senior Counsel submitted that the University has not made statute with regard to the subject like fixing of salary as provided in section 14.(8) of the Maharashtra Universities Act, 1994 and so it was not open for the University to issue such directions. He took this Court

through various provisions of the AICTE Act 1987 including provision of section 23 to show the procedure and submitted that the Hon'ble Apex Court has also observed that the orders issued by AICTE are superfluous, without authority of law.

8) For attacking the Government Resolution dated 12-8-2009 of the State Government the learned Senior Counsel submitted that this Government Resolution mentions a letter of the Central Government dated 31-12-2008 and in the letter dated 31-12-2008 there was no direction of binding nature issued by the Central Government. The learned Senior Counsel submitted that even in section 8.(3) of the Maharashtra Universities Act 1994 particular procedure is given and unless and until that procedure is followed, such direction cannot come into existence. He placed reliance on the observations made in some reported cases on this point and submitted that the aforesaid Government Resolution of the State Government can be of no use.

9) The learned Senior Counsel for the respondent -management made specific submissions with regard to the letter of the Central Government dated 31-12-2008 and Government Resolution dated 12-8-2009 as under :-

(i) This letter of Central Government was not for private unaided institutions;

(ii) if scheme is given in this letter it is necessary to adopt the scheme in entirety and any part of the scheme cannot be adopted;

(iii) if the scheme given in letter dated 31-12-2008 is to be implemented, the concerned University needs to make statute for the same first;

(iv) the letter dated 31-12-2008 was not intending for the use of the State Government, for enabling the State Government to issue Government Resolution dated 12-8-2009;

(v) in respect of the Government Resolution dated 12-8-2009 of the State Government the learned Senior Counsel submitted that the State Government accepted the scheme of the Central Government quoted in letter dated

31-12-2008 but it was conditional acceptance. He submitted that even in the Supreme Court, submissions were made for the State Government that the State Government had not taken policy decision as such on this point;

(vi) in the Government Resolution dated 12-8-2009 the source of power of the State Government is not given or the provision of section 8.(3) of the Maharashtra Universities Act 1994 is not mentioned;

(vii) if the Government Resolution dated 12-8-2009 was to be treated as an order made under section 8.(3) of the Universities Act, then it was necessary to issue it as per the procedure given in the same section, to publish in *official gazette*;

(viii) it is the job of the University to fix pay and so the Government Resolution dated 12-8-2009 cannot be used by the petitioners.

10) The aforesaid submissions made by the learned Senior Counsel for the respondent-management show that all these technical points are raised even when there is

decision of this Court on the points involved in the present matter, which is confirmed by the Apex Court in the case cited supra. The submissions were made by the learned Senior Counsel for the respondent-management on the basis of some observations made by the Apex Court in the case reported as **(2010) 1 SCC 730 (Rajendra Agricultural University v. Ashok Kumar Prasad)**. The observations are with regard to the procedure which is required to be followed by the University. They are in different context. Further, the Apex Court in the case of Secretary, MGM (cited supra) has made observations in this regard at paragraphs 69 and 70 as under :-

"69. While the GR dated 12.08.2009 is specific in its declaration that the elaborate Rules contained therein dealing with the pay scales of the various cadres of the teaching staff of the educational institutions mentioned therein, it does not make any distinction between aided and un-aided colleges. However, the GR does not purport to be one made in exercise of the power under Section 8(3) of the Universities Act. It is agreed on all hands at the Bar that the expression "Government Resolution" in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. No doubt the GR does not refer to the source which authorises the exercise of the power for revising the pay scales of the teaching staff of the various educational institutions mentioned therein. The mere absence of the recital of the source of power in our opinion

cannot determine the legal status of the instrument or deprive the instrument of its efficacy.

**70.** The difference between the authority of the State flowing from Article 162 of the Constitution or Section 8(3) of the Maharashtra Universities Act is two-fold. Firstly, the statutory authority under section 8(3) could be abrogated anytime by the legislature while the constitutional authority under Article 162 cannot be abrogated by the State Legislature. Secondly, the procedural requirements for the exercise of the power vary depending upon the nature of the source of the power, but the existence of power itself cannot be doubted."

11) The learned Senior Counsel for the respondent management placed reliance on some observations made by the Apex Court in the case reported as **(1989) 1 SCC 101 (Municipal Corporation of Delhi v. Gurnam Kaur)** and submitted that the Apex Court has not considered the procedure given in section 8(3) of the Maharashtra Universities Act, 1994 and so the decision of the Apex Court is not binding. Reliance was placed on one more case reported as **(2001) 3 SCC 537 (A-One Granites v. State of U.P.)**. In view of the observations made by the Apex Court already quoted, this Court holds that there is no force in the submissions made by the learned Senior Counsel as this point is dealt with by the Hon'ble Apex Court by touching the provisions of the Constitution of

India.

12) The learned Senior Counsel referred to the provision of section 14.(8) of the Maharashtra Universities Act, 1994 and placed reliance on the case reported as **(1998) 2 SCC 109 (Naga People's Movement of Human Rights v. Union of India)**. The facts of the reported case were altogether different and the observations of Supreme Court already quoted can be used against this submission as the State Government had issued the order by exercising authority of the State under Article 162 of the Constitution of India and there was virtually no necessity for the Vice Chancellor to issue further orders in that regard.

13) The learned Senior Counsel placed reliance on some observations made by the Apex Court in the cases reported as **AIR 1954 SC 493 (The State of M.P. v. G.C. Mandawar)**; and, **AIR 1965 SC 1196 (The State of Assam v. Ajit Kumar Sarma)**. The facts of the reported cases were altogether different and in the present matter the responsibility of the management to abide by the

undertaking given for getting permission to start the college and also the effect of binding nature of the direction given by the State Government with regard to the responsibility of the management towards its teaching staff is involved. This aspect is also touched by the Apex Court in the case cited supra and the entitlement of such employees is discussed. Similar employees working in aided institutions are getting pay scales suggested by 6th Pay Commission.

14) The learned Senior Counsel for the respondent - management submitted that due to laches and delay in filing the proceeding, no relief can be granted in favour of the petitioners. On this point he has placed reliance on some observations made by the Apex Court in the case reported as **(2015) 1 SCC 347 (State of U.P. v. Arvind Kumar Srivastava)**. The observations made by the Apex Court show that the appointment letters which were cancelled about 9 years prior to the date of the petition were challenged by the petitioners. The Apex Court refused to direct the reappointment of the petitioners. The facts of the present matter are totally different.

Copies of the representations made by the petitioners to the management, to University and the other authorities are on the record and there is also communication of AICTE showing that AICTE had asked the management to do the needful. The Government had taken decision in the year 2009 and after that the University and AICTE stepped in. The matter was filed in the year 2013, after the decision given by this Court in similar matter. The employees of private institutions do not dare to go against the management ordinarily as they want the protection of their services as they are in need of employment. They cannot be allowed to be exploited by holding that they need to go to Court immediately when Government decision comes out with regard to the implementation of the pays scales. The Government Resolution dated 12-8-2009 was in respect of such employees of unaided colleges also though this point was again argued in the present proceeding. On its own, the management ought to have complied with the directions given by the Government. So, this ground has no force.

15) The learned counsel for the University submitted that in view of the authority of State Government, the observations made by the Apex Court and the provisions of section 8.(3) of the Maharashtra Universities Act, 1994 the State Government's direction needs to be followed. He submitted that there was no necessity for the Vice Chancellor to issue one more order under Universities Act. He submitted that when there is the Government Resolution it will hold the field and there is no need to prepare separate Code under section 8.(3) of the Maharashtra Universities Act, 1994.

16) This Court is avoiding to discuss in detail the aforesaid various challenges raised by the learned Senior Counsel during arguments. All the relevant contentions are already dealt with by this Court while deciding Writ Petition No.11091 of 2010 and the Hon'ble Apex Court had set the disputed points at rest in the case cited supra. This Court holds that the petition deserves to be allowed and so following order.

17) The petition is allowed with no order as to cost.

The State Government, Dr. Babasaheb Ambedkar Marathwada University Aurangabad and All India Council of Technical Education (A.I.C.T.E.) Mumbai are hereby directed to see that respondent Nos.7 and 8 implement the pay scales suggested by 6th Pay Commission as applied by the Government of Maharashtra to the teaching staff with effect from 1-1-2006.

If the respondents fail to implement the recommendations in respect of application of the pay scale, the State Government, University and AICTE are to take steps for withdrawal of affiliation given by the University and for withdrawal of the approval given by the AICTE.

The aforesaid orders are to be implemented within three months from today. Rule is made absolute in aforesaid terms.

Sd/-  
**(SUNIL K. KOTWAL, J.)**

Sd/-  
**(T.V. NALAWADE, J. )**

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